

new work) in excess of \$1 million, unless the contractor agrees not to—

(1) Enter into any agreement with any of its employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration—

(i) Any claim under title VII of the Civil Rights Act of 1964; or

(ii) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or

(2) Take any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates that the employee or independent contractor resolve through arbitration—

(i) Any claim under title VII of the Civil Rights Act of 1964; or

(ii) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

(b) No funds appropriated or otherwise made available by the Fiscal Year 2010 Defense Appropriations Act (Pub. L. 111-118) or subsequent DoD appropriations acts may be expended unless the contractor certifies that it requires each covered subcontractor to agree not to enter into, and not to take any action to enforce, any provision of any agreement, as described in paragraph (a) of this section, with respect to any employee or independent contractor performing work related to such subcontract.

[75 FR 27947, May 19, 2010. Redesignated at 75 FR 76297, Dec. 8, 2010; 76 FR 38048, June 29, 2011]

222.7403 Applicability.

This requirement does not apply to the acquisition of commercial items (including commercially available off-the-shelf items).

[75 FR 76297, Dec. 8, 2010]

222.7404 Waiver.

(a) The Secretary of Defense may waive, in accordance with paragraphs

(b) through (d) of this section, the applicability of paragraphs (a) or (b) of 222.7402 to a particular contract or subcontract, if the Secretary or the Deputy Secretary personally determines that the waiver is necessary to avoid harm to national security interests of the United States, and that the term of the contract or subcontract is not longer than necessary to avoid such harm.

(b) The waiver determination shall set forth the grounds for the waiver with specificity, stating any alternatives considered, and explain why each of the alternatives would not avoid harm to national security interests.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures.

(d) The Secretary of Defense will transmit the determination to Congress and simultaneously publish it in the FEDERAL REGISTER, not less than 15 business days before the contract or subcontract addressed in the determination may be awarded.

[75 FR 76297, Dec. 8, 2010]

222.7405 Contract clause.

Use the clause at 252.222-7006, Restrictions on the Use of Mandatory Arbitration Agreements, in all solicitations and contracts (including task or delivery orders and bilateral modifications adding new work) valued in excess of \$1 million utilizing funds appropriated or otherwise made available by the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) or subsequent DoD appropriations acts, except in contracts for the acquisition of commercial items, including commercially available off-the-shelf items.

[76 FR 38048, June 29, 2011]

PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 223.3—Hazardous Material Identification and Material Safety Data

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- 223.303 Contract clause.
- 223.370 Safety precautions for ammunition and explosives.
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- 223.370-4 Procedures.
- 223.370-5 Contract clauses.

Subpart 223.4—Use of Recovered Materials

- 223.405 Procedures.

Subpart 223.5—Drug-Free Workplace

- 223.570 Drug-free work force.
- 223.570-1 Policy.
- 223.570-2 Contract clause.

Subpart 223.8—Ozone-Depleting Substances

- 223.803 Policy.

Subpart 223.70 [Reserved]

Subpart 223.71—Storage and Disposal of Toxic and Hazardous Materials

- 223.7100 Policy.
- 223.7101 Procedures.
- 223.7102 Exceptions.
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Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives

- 223.7200 Definition.
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Subpart 223.73—Minimizing the Use of Materials Containing Hexavalent Chromium

- 223.7300 Definition.
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- 223.7304 Exceptions.
- 223.7305 Authorization and approval.
- 223.7306 Contract clause.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36365, July 31, 1991, unless otherwise noted.

Subpart 223.3—Hazardous Material Identification and Material Safety Data

223.302 Policy.

(e) The contracting officer shall also provide hazard warning labels, that are

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received from apparent successful offerors, to the cognizant safety officer.

[70 FR 73150, Dec. 9, 2005]

223.303 Contract clause.

Use the clause at 252.223-7001, Hazard Warning Labels, in solicitations and contracts which require submission of hazardous material data sheets (see FAR 23.302(c)).

[56 FR 67215, Dec. 30, 1991]

223.370 Safety precautions for ammunition and explosives.

223.370-1 Scope.

(a) This section applies to all acquisitions involving the use of ammunition and explosives, including acquisitions for—

- (1) Development;
- (2) Testing;
- (3) Research;
- (4) Manufacturing;
- (5) Handling or loading;
- (6) Assembling;
- (7) Packaging;
- (8) Storage;
- (9) Transportation;
- (10) Renovation;
- (11) Demilitarization;
- (12) Modification;
- (13) Repair;
- (14) Disposal;
- (15) Inspection; or

(16) Any other use, including acquisitions requiring the use or the incorporation of materials listed in paragraph (b) of this subsection for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition, or explosive end item or weapon system.

(b) This section does not apply to acquisitions solely for—

- (1) Inert components containing no explosives, propellants, or pyrotechnics;
- (2) Flammable liquids;
- (3) Acids;
- (4) Oxidizers;
- (5) Powdered metals; or
- (6) Other materials having fire or explosive characteristics.

223.370-2 Definition.

Ammunition and explosives, as used in this section, is defined in the clause at

252.223-7002, Safety Precautions for Ammunition and Explosives.

223.370-3 Policy.

(a) DoD policy is to ensure that its contractors take reasonable precautions in handling ammunition and explosives so as to minimize the potential for mishaps.

(b) This policy is implemented by DoD Manual 4145.26-M, DoD Contractors' Safety Manual for Ammunition and Explosives, which is incorporated into contracts under which ammunition and explosives are handled. The manual contains mandatory safety requirements for contractors. When work is to be performed on a Government-owned installation, the contracting officer may use the ammunition and explosives regulation of the DoD component or installation as a substitute for, or supplement to, DoD Manual 4145.26-M, as long as the contract cites these regulations.

[56 FR 36365, July 31, 1991, as amended at 70 FR 73150, Dec. 9, 2005]

223.370-4 Procedures.

Follow the procedures at PGI 223.370-4.

[70 FR 73151, Dec. 9, 2005]

223.370-5 Contract clauses.

Use the clauses at 252.223-7002, Safety Precautions for Ammunition and Explosives, and 252.223-7003, Change in Place of Performance—Ammunition and Explosives, in all solicitations and contracts for acquisition to which this section applies.

Subpart 223.4—Use of Recovered Materials

223.405 Procedures.

Follow the procedures at PGI 223.405.

[70 FR 73151, Dec. 9, 2005]

Subpart 223.5—Drug-Free Workplace

SOURCE: 57 FR 32737, July 23, 1992, unless otherwise noted.

223.570 Drug-free work force.

223.570-1 Policy.

DoD policy is to ensure that its contractors maintain a program for achieving a drug-free work force.

[57 FR 32737, July 23, 1992. Redesignated at 70 FR 73151, Dec. 9, 2005]

223.570-2 Contract clause.

(a) Use the clause at 252.223-7004, Drug-Free Work Force, in all solicitations and contracts—

(1) That involve access to classified information; or

(2) When the contracting officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract.

(b) Do not use the clause in solicitations and contracts—

(1) For commercial items;

(2) When performance or partial performance will be outside the United States and its outlying areas, unless the contracting officer determines such inclusion to be in the best interest of the Government; or

(3) When the value of the acquisition is at or below the simplified acquisition threshold.

[57 FR 32737, July 23, 1992, as amended at 64 FR 2598, Jan. 15, 1999; 70 FR 35545, June 21, 2005. Redesignated at 70 FR 73151, Dec. 9, 2005]

Subpart 223.8—Ozone-Depleting Substances

223.803 Policy.

No DoD contract may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity in accordance with Section 326, Public Law 102-484 (10 U.S.C. 2301 (repealed) note). This restriction is in addition to any

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imposed by the Clean Air Act and applies after June 1, 1993, to all DoD contracts, regardless of place of performance.

[71 FR 75892, Dec. 19, 2006]

Subpart 223.70 [Reserved]

Subpart 223.71—Storage and Disposal of Toxic and Hazardous Materials

SOURCE: 58 FR 28466, May 13, 1993, unless otherwise noted.

223.7100 Policy.

10 U.S.C. 2692 prohibits storage or disposal of non-DoD-owned toxic or hazardous materials on DoD installations, except as provided in 223.7102. DoD Instruction 4715.6, Environmental Compliance, implements 10 U.S.C. 2692.

[58 FR 28466, May 13, 1993, as amended at 67 FR 61516, Oct. 1, 2002]

223.7101 Procedures.

(a) If the contracting officer is uncertain as to whether particular activities are prohibited or fall under one of the exceptions in 223.7102, the contracting officer should seek advice from the cognizant office of counsel.

(b) When storage, treatment, or disposal of non-DoD-owned toxic or hazardous materials is authorized in accordance with this subpart, the contract or authorization should specify the types, conditions, and quantities of toxic or hazardous materials that may be temporarily stored, treated, or disposed of in connection with the contract or as a result of the authorized commercial use of a DoD industrial-type facility.

[60 FR 61597, Nov. 30, 1995]

223.7102 Exceptions.

(a) The prohibition of 10 U.S.C. 2692 does not apply to—

(1) The storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services Administration;

(2) The temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible

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for Federal law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the Secretary of Defense and the head of the Federal agency concerned;

(3) The temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities;

(4) The disposal of excess explosives produced under a DoD contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements;

(5) The temporary storage of nuclear materials or nonnuclear classified materials in accordance with an agreement with the Secretary of Energy;

(6) The storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable DoD regulations;

(7) The temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency;

(8) The storage of any material that is not owned by DoD, if the Secretary of the military department concerned determines that the material is required or generated by a private person in connection with the authorized and compatible use by that person of an industrial-type DoD facility; or

(9) The treatment and disposal of any non-DoD-owned material if the Secretary of the military department concerned—

(i) Determines that the material is required or generated by a private person in connection with the authorized and compatible commercial use by that person of an industrial-type facility of that military department; and

(ii) Enters into a contract with that person that—

(A) Is consistent with the best interest of national defense and environmental security; and

(B) Provides for that person's continued financial and environmental responsibility and liability with regard to the material.

(b) The Secretary of Defense, where DoD Instruction 4715.6 applies, may grant exceptions to the prohibition of 10 U.S.C. 2692 when essential to protect the health and safety of the public from imminent danger.

[58 FR 28466, May 13, 1993, as amended at 60 FR 13076, Mar. 10, 1995; 60 FR 61597, Nov. 30, 1995; 67 FR 61516, Oct. 1, 2002]

223.7103 Contract clause.

(a) Use the clause at 252.223-7006, Prohibition on Storage and Disposal of Toxic and Hazardous Materials, in all solicitations and contracts which require, may require, or permit contractor performance on a DoD installation.

(b) Use the clause at 252.223-7006 with its Alternate I, when the Secretary of the military department issues a determination under the exception at 223.7102(a)(9).

[60 FR 13076, Mar. 10, 1995]

Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives

SOURCE: 61 FR 7743, Feb. 29, 1996, unless otherwise noted.

223.7200 Definition.

“Arms, ammunition, and explosives (AA&E),” as used in this subpart, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

223.7201 Policy.

(a) The requirements of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, shall be applied to contracts when—

(1) AA&E will be provided to the contractor or subcontractor as Government-furnished property; or

(2) The principal development, production, manufacture, or purchase of AA&E is for DoD use.

(b) The requirements of DoD 5100.76-M need not be applied to contracts when—

(1) The AA&E to be acquired under the contract is a commercial item within the meaning of FAR 2.101; or

(2) The contract will be performed in a Government-owned contractor-operated ammunition production facility. However, if subcontracts issued under such a contract will meet the criteria of paragraph (a) of this section, the requirements of DoD 5100.76-M shall apply.

223.7202 Preaward responsibilities.

When an acquisition involves AA&E, technical or requirements personnel shall specify in the purchase request—

(a) That AA&E is involved; and

(b) Which physical security requirements of DoD 5100.76-M apply.

223.7203 Contract clause.

Use the clause at 252.223-7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, in all solicitations and contracts to which DoD 5100.76-M applies, in accordance with the policy at 223.7201. Complete paragraph (b) of the clause based on information provided by cognizant technical or requirements personnel.

[61 FR 7743, Feb. 29, 1996; 61 FR 18195, Apr. 24, 1996]

Subpart 223.73—Minimizing the Use of Materials Containing Hexavalent Chromium

SOURCE: 76 FR 25575, May 5, 2011, unless otherwise noted.

223.7300 Definition.

Legacy system, as used in this subpart, means any program that has passed Milestone A in the defense acquisition management system, as defined in DoD Instruction 5000.02.

223.7301 Policy.

It is DoD policy to minimize hexavalent chromium (an anti-corrosive) in items acquired by DoD (deliverables and construction material), due to the serious human health and environmental risks related to its use. Executive Order 13423, section 3,

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paragraph (a) requires that the heads of agencies reduce or eliminate the acquisition and use of toxic or hazardous chemicals. Executive Order 13514 requires that the heads of agencies are responsible for “reducing and minimizing the quantity of toxic and hazardous chemicals and materials acquired, used, or disposed of.”

223.7302 Authorities.

(a) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

(b) Executive Order 13514 of October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance.

223.7303 Prohibition.

(a) Except as provided in 223.7304 and 223.7305, no contract may include a specification or standard that results in a deliverable or construction material containing more than 0.1 percent hexavalent chromium by weight in any homogeneous material in the deliverable or construction material where proven substitutes are available that provide acceptable performance for the application.

(b) This prohibition is in addition to any imposed by the Clean Air Act regardless of the place of performance.

223.7304 Exceptions.

The prohibition in 223.7303 does not apply to—

(a) Legacy systems and their related parts, subsystems, and components that already contain hexavalent chromium. However, alternatives to hexavalent chromium shall be considered by the appropriate official during system modifications, follow-on procurements of legacy systems, or maintenance procedure updates; and

(b) Additional sustainment related contracts (e.g., parts, services) for a system in which use of hexavalent chromium was previously approved.

223.7305 Authorization and approval.

(a) The prohibition in 223.7303 does not apply to critical defense applications if no substitute can meet performance requirements. The DoD policy of April 8, 2009, “Minimizing the

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Use of Hexavalent Chromium,” contains requirements for weighing hexavalent chromium versus substitutes. DoD Program Managers must consider the following factors—

(1) Cost effectiveness of alternative materials or processes;

(2) Technical feasibility of alternative materials or processes;

(3) Environment, safety, and occupational health risks associated with the use of the hexavalent chromium or substitute materials in each specific application;

(4) Achieving a DoD Manufacturing Readiness Level of at least eight for any qualified alternative;

(5) Materiel availability of hexavalent chromium and the proposed alternatives over the projected life span of the system; and

(6) Corrosion performance difference of alternative materials or processes as determined by agency corrosion subject matter experts.

(b) However, unless an exception in 223.7304 applies, the incorporation of hexavalent chromium in items acquired by DoD shall be specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service from the Program Executive Office or equivalent level, in coordination with the component Corrosion Control and Prevention Executive. Follow the procedures in PGI 223.7305.

223.7306 Contract clause.

Unless an exception in 223.7304 applies, or use has been authorized in accordance with 223.7305, use the clause at 252.223–7008, Prohibition of Hexavalent Chromium, in solicitations and contracts for supplies, maintenance and repair services, or construction.

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 224.1—Protection of Individual Privacy

Sec.
224.103 Procedures.